

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant : Yoon Kean Wong
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Docket No. : 1070P3704
Customer No. : 22879

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

SIR:

This Appeal Brief is in furtherance to the Notice of Appeal filed on July 20, 2011. The Appeal Brief contains the following sections in the order set forth below:

- I. REAL PARTY IN INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS
- V. SUMMARY OF THE CLAIMED SUBJECT MATTER
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- X. RELATED PROCEEDINGS APPENDIX

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, or be affected by, or have a bearing on the decision of the Board in the pending appeal.

III. STATUS OF CLAIMS

Claims originally filed: 1-25

Claims added: 26-59

Claimed canceled: 1-29, 35, 38, 43, 47, 53 and 55

Claims withdrawn from consideration: None

Claims allowed: None

Claims objected to: None

Claims rejected: 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59

Claims on appeal: 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59

IV. STATUS OF AMENDMENTS

No amendments have been filed subsequent to the Final Office Action mailed April 20, 2011.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The following is a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. Independent claims 30, 39 and 48 are fully supported, concisely explained and mapped to the specification and drawings.

Independent claim 30 maps to the specification and drawings as follows:

Claim 30	Specification and Drawings
A system for pricing a product, comprising: a handheld computer comprising (a) a location circuit configured to provide location data based at least in part on the location of the handheld computer,	<p><i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i></p> <p>Figure 1.</p>
wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation, and	<p><i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i></p> <p>Figure 1.</p>
(b) a wireless transceiver configured to provide wireless communication of the location data and a user identifier; and	<p><i>See, e.g., paragraph 0024, “According to an exemplary embodiment, system 100 includes a transmitter or a transceiver 110, a receiver or transceiver 120, and data 140.</i></p>

	Transceiver or transmitter 110 may be incorporated into a handheld computer, or incorporated into or attached to an object or person of interest.”
a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.	<p>Figure 1.</p> <p><i>See, e.g.</i>, paragraph 30, “Risk assessment system 200 uses data 140 to provide an updated risk assessment associated with object 112. For example, by providing continuous location data (as part of data 140) to risk assessment system 200, risk assessment system 200 may continuously update the risk to object 112 based on location. If object 112 is located in a high-risk location (as defined by historical or actuarial data), the price for insurance that an insurance provider charges may go up in accordance with the perceived risk assessment. Correspondingly, if object 112 is located in a low-risk location (as defined by historical or actuarial data), the price for insurance that that insurance provider charges may go down in accordance with the perceived risk assessment.”</p> <p>Figure 2.</p>

Independent claim 39 maps to the specification and drawings as follows:

Claim 39	Specification and Drawings
A method for pricing a product, the pricing being determined based on a location of a handheld computer, comprising: determining the location of the handheld computer, the handheld computer comprising (a) a location circuit configured to provide location data based on the location of the handheld computer,	<p><i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i></p> <p>Figures 1, 4.</p>
wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation and	<p><i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i></p> <p>Figures 1, 4.</p>
(b) a wireless transceiver configured for providing wireless communication of the location data and a user identifier; and	<p><i>See, e.g., paragraph 0024, “According to an exemplary embodiment, system 100 includes a transmitter or a transceiver 110, a receiver or transceiver 120, and data 140. Transceiver or transmitter 110 may be incorporated into a handheld computer, or incorporated into or attached to an object or person of interest.”</i></p>

pricing the product based on the location of the handheld computer and the personal identifier, wherein the step of pricing comprises generating a lower price for selling the product to a person or handheld computer associated with the user identifier, wherein the pricing the product is performed by one of the handheld computer and a remote server.	<p>Figure 1. <i>See, e.g., paragraph 30, "Risk assessment system 200 uses data 140 to provide an updated risk assessment associated with object 112. For example, by providing continuous location data (as part of data 140) to risk assessment system 200, risk assessment system 200 may continuously update the risk to object 112 based on location. If object 112 is located in a high-risk location (as defined by historical or actuarial data), the price for insurance that an insurance provider charges may go up in accordance with the perceived risk assessment. Correspondingly, if object 112 is located in a low-risk location (as defined by historical or actuarial data), the price for insurance that that insurance provider charges may go down in accordance with the perceived risk assessment."</i></p> <p>Figure 2.</p>
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Independent claim 48 maps to the specification and drawings as follows:

Claim 48	Specification and Drawings
A system for pricing a product, comprising: a transceiver configured to wirelessly receive location data based on a location of a handheld computer and a user identifier for the handheld computer,	<i>See, e.g., paragraph 0024, “According to an exemplary embodiment, system 100 includes a transmitter or a transceiver 110, a receiver or transceiver 120, and data 140. Transceiver or transmitter 110 may be incorporated into a handheld computer, or incorporated into or attached to an object or person of interest.”</i>
the handheld computer comprising a location circuit configured to provide location data,	<i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i>
wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation; and	<i>See, e.g., paragraph 0027, “Transmitter 110 may further include a location receiver 114. Location receiver 114 receives a signal representative of location. Location receiver 114 may receive the signal from a position signal or location signal, such as a signal from a global positioning system (shown in FIG. 1 as GPS 50), including a GPS satellite system. Alternatively, location receiver 114 may use a variety of position signals to track the position of transmitter 110 and object 112 such as radio frequency (RF) triangulation, cellular tower location, access point location, etc.”</i>

a data processor configured to determine a price for the product based at least in part on the location data received by the transceiver, wherein the price is determined at least in part by adjusting a price lower for selling the product to a person or handheld computer associated with the user identifier.

See, e.g., paragraph 30, “Risk assessment system 200 uses data 140 to provide an updated risk assessment associated with object 112. For example, by providing continuous location data (as part of data 140) to risk assessment system 200, risk assessment system 200 may continuously update the risk to object 112 based on location. If object 112 is located in a high-risk location (as defined by historical or actuarial data), the price for insurance that an insurance provider charges may go up in accordance with the perceived risk assessment. Correspondingly, if object 112 is located in a low-risk location (as defined by historical or actuarial data), the price for insurance that that insurance provider charges may go down in accordance with the perceived risk assessment.”

Figure 2.

VI. GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

Whether claims 30-32, 36, 37, 39, 40, 45, 46, 48-50, 52, 54 and 56-59 are patentable under 35 U.S.C. § 103(a) over United States Patent No. 6,901,261 to Banatre et al. (hereinafter “Banatre”) in view of United States Patent No. 5,528,248 to Steiner et al. (hereinafter “Steiner”) and in view of United States Patent No. 6,324,522 to Peterson et al. (hereinafter “Peterson”).

Whether claims 33, 41, 44 and 51 are patentable under 35 U.S.C. § 103(a) over Banatre in view of Steiner in view of Peterson and in further view of United States Patent No 6,269,342 to Brick et al. (hereinafter “Brick”).

Whether claims 34 and 42 are patentable under 35 U.S.C. § 103(a) over Banatre in view of Steiner in view of Peterson and in further view of United States Patent No 6,012,834 to Dueck et al. (hereinafter “Dueck”).

Whether claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59 are patentable under 35 U.S.C. § 103(a) over European Patent No. 0568824A2 to Vendetti et al. (hereinafter “Vendetti”) in view of Steiner.

Whether claims 34 and 42 are patentable under 35 U.S.C. § 103(a) as being over Vendetti in view of Steiner and in further view of Dueck.

VII. ARGUMENT

Claim Rejections – 35 U.S.C. § 103 – Ground A

Claims 30-32, 36, 37, 39, 40, 45, 46, 48-50, 52, 54, and 56-59 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banatre in view of Steiner and in view of Peterson. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Claims 33, 41, 44 and 51 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banatre in view of Steiner in view of Peterson and in further view of Brick. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Claims 34 and 42 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Banatre in view of Steiner in view of Peterson and in further view of Dueck.

Applicants respectfully traverse the rejection, and requests reconsideration and withdrawal of the rejection.

To form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest *every element* of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59. Therefore claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59 define over the cited references whether taken alone or in combination. For example, claim 30 recites the following language, in relevant part:

a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.

As correctly noted in the Office Action, the above-recited language is not disclosed by Banatre. *See* Office Action at page 4, paragraph 7. According to the Office Action, the above-recited language is disclosed by Peterson at column 24, lines 9-20. *See* Office Action page 5, paragraph 11. Applicant respectfully disagrees.

Peterson fails to disclose the above-recited language of the claimed subject matter. For example, Peterson at the given cite, in relevant part, states:

The price is preferably calculated based on a table uploaded to the information network by the vendor. The table includes a list of the customer ID's for the users authorized to conduct electronic commerce with the vendor, and a discount percentage associated with each customer ID for each product code. This enables the vendor to quote different prices to different customers, with the appropriate discounted price being displayed to the user based on the user's user ID given at log-on. If no discount percentage is given, the displayed price will be list price.

See Peterson at column 24, lines 9-18. As indicated above, Peterson merely discloses associating a price with a user ID, not location data received by a data processor. By way of contrast, the claimed subject matter discloses “a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.” Therefore, Peterson fails to disclose, teach or suggest the above-recited language. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 30.

For at least these reasons, claim 30 is patentable over the cited references, whether taken alone or in combination. In addition, claims 39 and 48 recite features similar to those recited in claim 30. Therefore, claims 39 and 48 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 30. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 30, 39 and 48. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See MPEP § 2143.03*, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 31-34, 36, 37, 40-42, 44-46, 49-52, 54 and 56-59 that depend from claims 30, 39 and 48, and therefore contain additional features that further distinguish these claims from the cited references.

Claim Rejections – 35 U.S.C. § 103 – Ground B

Claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59 stand alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent No. 0568824A2 to Vendetti et al. (hereinafter “Vendetti”) in view of Steiner. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

Claims 34 and 42 stand alternatively rejected under 35 U.S.C. § 103(a) as being unpatentable over Vendetti in view of Steiner and in further view of Dueck. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the rejection.

To form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest *every element* of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59. Therefore claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54 and 56-59 define over the cited references whether taken alone or in combination. For example, claim 30 recites the following language, in relevant part:

a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.

According to the Office Action, the above-recited language is disclosed by Vendetti at column 5, lines 20-44; column 6, lines 20-40; column 7, lines 1-30; and column 8, lines 31-50. *See* Office Action page 9, paragraph 24. Applicant respectfully disagrees.

Vendetti fails to disclose the above-recited language of the claimed subject matter. For example, Vendetti at the given cite arguably discloses a cellular telephone system that uses a plurality of zones to bill customers for calls transmitted within the plurality of zones. For example, each zone may be associated with rate within a schedule table. Based upon a zone used to transmit a call, the appropriate rate may be charged to the user for the call. *See* Vendetti at column 7, lines 1-30. By way of contrast, the claimed subject matter discloses “a data processor configured to receive the location data and the personal identifier, to set a price for selling the product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data.”

Vendetti merely discloses a rate table associating rates with zones. There appears to be no price adjustment within the rate tables. For example, the prices within each zone remain constant and are not adjusted based upon the location of a mobile device. Claim 30 recites, “adjust the price lower for selling the product to a person associated with the

user identifier based at least in part on the location data.” The system disclosed by Vendetti merely charges a pre-assigned rate to calls placed within a particular zone. The pricing structure is based on the zone used to transmit a call, not a location of a mobile device. Therefore, Vendetti fails to disclose, teach or suggest the above-recited language. Consequently, the cited references, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 30.

For at least these reasons, claim 30 is patentable over the cited references, whether taken alone or in combination. In addition, claims 39 and 48 recite features similar to those recited in claim 30. Therefore, claims 39 and 48 are not obvious and are patentable over the cited references for reasons analogous to those presented with respect to claim 30. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 30, 39 and 48. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See MPEP § 2143.03*, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 31-34, 36, 37, 40-42, 44-46, 49-52, 54 and 56-59 that depend from claims 30, 39 and 48, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to the credit card in the previously filed credit card authorization form.

Respectfully submitted,

KACVINSKY DAISAK PLLC

*/John F. Kacvinsky/
John F. Kacvinsky, Reg. No. 40,040
Under 37 CFR 1.34(a)*

Dated: October 20, 2011

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VIII. CLAIMS APPENDIX

1-29. (Canceled)

30. (Previously Presented) A system for pricing a product, comprising:
a handheld computer comprising (a) a location circuit configured to provide
location data based at least in part on the location of the handheld computer, wherein the
location circuit is configured to provide the location data using at least one of a signal
from a global positioning system and radio frequency (RF) triangulation, and (b) a
wireless transceiver configured to provide wireless communication of the location data
and a user identifier; and

a data processor configured to receive the location data and the personal
identifier, to set a price for selling the product, and to adjust the price lower for selling
the product to a person associated with the user identifier based at least in part on the
location data.

31. (Previously Presented) A system for pricing a product as in claim 30, wherein the
data processor is remote from the handheld computer.

32. (Previously Presented) A system for pricing a product as in claim 31, wherein the
data processor is configured to receive the location data from the location circuit
wirelessly through a cellular network.

33. (Previously Presented) A system for pricing a product as in claim 30, wherein the
data processor is further configured to price the product based on a date or a time of day.

34. (Previously Presented) A system for pricing a product as in claim 30, wherein the
data processor is further configured to price the product based on an environmental
condition, including a weather condition.

35. (Canceled)

36. (Previously Presented) A system for pricing a product as in claim 30, wherein the
data processor is configured to dynamically adjust the price for the product based on the
location of the handheld computer.

37. (Previously Presented) A system for pricing a product as in claim 30, wherein the location data further comprises a distance between the location of the handheld computer and a provider of the product.

38. (Cancelled)

39. (Previously Presented) A method for pricing a product, the pricing being determined based on a location of a handheld computer, comprising:

determining the location of the handheld computer, the handheld computer comprising (a) a location circuit configured to provide location data based on the location of the handheld computer, wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation and (b) a wireless transceiver configured for providing wireless communication of the location data and a user identifier; and

pricing the product based on the location of the handheld computer and the personal identifier, wherein the step of pricing comprises generating a lower price for selling the product to a person or handheld computer associated with the user identifier, wherein the pricing the product is performed by one of the handheld computer and a remote server.

40. (Previously Presented) A method for pricing a product as in claim 39, further comprising transmitting to or receiving at a data processor the location of the handheld computer via the wireless transceiver and a cellular network, the data processor being configured to price the product based on the location of the handheld computer.

41. (Previously Presented) A method for pricing a product as in claim 39, further including pricing the product based on a date or a time of day.

42. (Previously Presented) A method for pricing a product as in claim 39, further including pricing the product based on an environmental condition, including a weather condition.

43. (Cancelled)

44. (Previously Presented) A method for pricing a product as in claim 39, further comprising dynamically adjusting the price of the product based on a change in at least two of the following parameters: a date, a time of day, an environmental condition including a weather condition, or a location of the handheld computer.
45. (Previously Presented) A method for pricing a product as in claim 39, wherein the step of pricing the product is performed by the handheld computer.
46. (Previously Presented) A method for pricing a product as in claim 39, wherein the step of pricing the product is performed by a remote server.
47. (Canceled)
48. (Previously Presented) A system for pricing a product, comprising:
a transceiver configured to wirelessly receive location data based on a location of a handheld computer and a user identifier for the handheld computer, the handheld computer comprising a location circuit configured to provide location data, wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation; and
a data processor configured to determine a price for the product based at least in part on the location data received by the transceiver, wherein the price is determined at least in part by adjusting a price lower for selling the product to a person or handheld computer associated with the user identifier.
49. (Previously Presented) A system for pricing a product as in claim 48, wherein the transceiver is configured to communicate over a cellular network.
50. (Previously Presented) A system for pricing a product as in claim 48, wherein the data processor further comprises a data storage device configured to store the location data received from the transceiver.
51. (Previously Presented) A system for pricing a product as in claim 48 wherein the data processor is further configured to price the product based on a date or a time of day.

52. (Previously Presented) A system for pricing a product as in claim 48, wherein the data processor is configured to dynamically adjust the price for the product based on the location of the handheld computer.

53. (Canceled)

54. (Previously Presented) The system of Claim 30, wherein the handheld computer comprises a cellular telephone.

55. (Canceled)

56. (Previously Presented) The system of Claim 48, wherein the data processor is part of a server remote from the handheld computer.

57. (Previously Presented) The system of Claim 56, wherein the server is remote from the handheld computer across a cellular network.

58. (Previously Presented) The system of Claim 30, wherein the data processor is further configured to receive user information and to set the price for the product based on the user information.

59. (Previously Presented) The system of Claim 48, wherein the transceiver is further configured to receive user information for a user of the handheld computer, wherein the data processor is further configured to determine the price for the product based on the user information received by the transceiver.

EVIDENCE APPENDIX

None.

IX. RELATED PROCEEDINGS APPENDIX

None.